

WC Docket No. 13-150

JUL 29 2013

**Rodney McDonald**Federal Communications Commission  
Office of the Secretary

**From:** Jim Rosenthal  
**Sent:** Thursday, July 18, 2013 1:54 PM  
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**Subject:** Why is the FCC Granting Verizon Forbearance on WC Docket #13-150 (Fire Island Discontinuance)? A 90-Day Comment Period is Required. FCC Is Offering Only 58.

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Dear Mr. McGowan:

As you know, on June 7, 2013, Verizon NY Inc filed an application with the FCC under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, and section 63.71 of the Federal Communications rules, 47 C.F.R. 63.71, to discontinue certain domestic telecommunications services in certain parts of New Jersey and New York affected by Hurricane Sandy – which includes Fire Island. The application indicates that Verizon requests authority to discontinue three copper-based special access services. Verizon asserts that copper wireline facilities used to provide these services in certain parts of New Jersey and New York were destroyed or rendered inoperable by Hurricane Sandy on or after October 29, 2012. Verizon indicates that the facilities are located in New Jersey and New York and are specifically referenced in network change notices that Verizon filed pursuant to its waiver for disaster planning and response on May 10, 2013. (See <http://apps.fcc.gov/ecfs/document/view?id=7022424983> )

The Verizon application filing was not posted on the FCC website until June 12, 2013. (See <http://apps.fcc.gov/ecfs/comment/view;jsessionid=JLRpRykctfsQGLJssjpLqx4byStvxMnNz1JZ8QtNZh94nC6S2LG2!-528136363!-1469015862?id=6017448949> )

On July 29, 2013, the FCC published a Public Notice requesting comments on the Application of Verizon-NY to discontinue wireline telecommunications services to Western and Central portions of Fire Island, where Hurricane Sandy damaged its copper facilities beyond repair, Verizon-NY has represented to the FCC that the discontinued services will be grandfathered for customers served by functioning copper lines, and for customers to whom the discontinued services cannot be restored, Voice Link will be offered as the sole replacement. For data services, Voice Link subscribers will be offered 4G LTE broadband services, to be provided by Verizon Wireless. Without any further action by the FCC, this Application will be deemed granted after sixty days, and thus, Verizon-NY will be permitted to discontinue wireline telecommunications services to Western and Central Fire Island on or after August 27, 2013. (See PUBLIC NOTICE: Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services Word | Acrobat | DA No. 13-1475. WC Docket No 13-150. Comp Pol. File No. 1115. & 6/28/2013 PUBLIC NOTICE: Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services Word | Acrobat | DA No. 13-1474. WC Docket No 13-149. Comp Pol. File No. 1112.)

47 C.F.R. § 51.325 through 51.335 contain the procedures to provide public notice regarding any changes to an incumbent local exchange carrier's ("ILEC") network that will affect a competitor's performance or ability to provide service, interoperability between competitive networks, customer premises equipment, or retirement of copper loops. (47

**C.F.R. § 51.325(a) Under the current rules, before an ILEC can retire copper loops, the FCC must issue a public notice regarding the proposed retirement and seek comments for a period of 90 days, although if no objections have been filed by the 90th day, the proposed retirement shall be deemed approved (47 C.F.R. § 51.333(b)(2)).**

The clock, under 47 C.F.R. § 51.333(b)(2), begins running when the FCC issues a public notice – **not** when the incumbent local exchange carrier (ILEC) provides customers a 47 C.F.R. §, 63.71 discontinuance notice.

Moreover, in a recent Verizon filing in Maryland, Verizon stated:

**“(W)e define copper retirement as the replacement of copper loops or copper subloops with fiber to the home or fiber to the curb loops, as referred to in the Federal Communications Commission's *Triennial Review Order* and in 47 C.F.R. § 51.333(b)(2). See also *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Development of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) (TRO) at' 281.”**  
**(Reply Brief of Verizon MD EXHIBIT 1 PUBLIC - Maryland Public ...)**

In the Federal Communications Commission's *Triennial Review Order* (TRO) and FCC Order on Reconsideration, the FCC amended its short term notice rules to include those instances when the ILEC chooses to replace a copper loop or copper subloop with an FTTH or FTTC loop and to retire the copper loop or copper subloop:

Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops or fiber-to-the-curb loops shall be subject to the short term notice provisions of this section, but under no circumstance may an incumbent LEC provide less than 90 days notice of such change. (47 C.F.R. 51.333(b)(2))

(Also see: *Review of the Section 251 Unbundling Obligations of Incumbent ...*) and FCC 04-248  
([https://prodnet.www.neca.org/publicationsDocs/wwwpdf/102004\\_1.pdf](https://prodnet.www.neca.org/publicationsDocs/wwwpdf/102004_1.pdf) )

**Since on Fire Island, Verizon is not replacing copper with fiber – which would offer residents and businesses with fixed broadband services, whereas the wireless VoiceLink service does not -- how can Verizon justify its copper replacement when its actions on Fire Island run afoul of its own internal practice standards, let alone the FCC's broadband deployment standards?**

**But most importantly, if the FCC provided Public Notice seeking Public Comment Notification on June 29, 2013, why is it curtailing the 90 provision, and granting only 58 days for public comment and review? In other words, why is it granting Verizon of New York, Inc. a forbearance exemption?**

Unlike the FCC, the NYS PSC extended its Public Comment period significantly to provide ample time to receive consumer input and to have sufficient time to evaluate the adequacy of VoiceLink's technology, before it would permanently grant the ILEC permission to permanently replace fixed copper wireline services.

In its Public Notice, the FCC argues it seeks comment on Verizon's requests for authority to discontinue the Affected Services in the Service Areas, including comment on its waiver request, the steps it has taken to notify customers given the particular circumstances in this case, the availability of alternative services including the steps Verizon has taken to offer alternative service to customers, and any other relevant issues in light of the above mentioned factors.

Why then is the FCC not providing adequate time for public comment and review?

The FCC further seeks to hear public comments on what impact, if any, should the circumstances of this case have on the Commission's traditional analysis, including the fact that many of the affected customers have already lost service. Questions needing to be addressed include: Is Voice Link service a reasonable substitute for the Affected Services? Are there features, functions, or capabilities that were available over the Affected Services that would not be available over the Voice Link service? What is the significance of the features, functions and capabilities that are not currently available over the Voice Link service?

Finally, the FCC advises that Affected Parties expressing concern should identify whether any conditions could ensure that the discontinuance of Verizon's wireline service does not harm the public interest.

Should the FCC grant Verizon forbearance from the reporting requirements in 47 C.F.R. §, 63.71 (Category 10), state commissions, such as the NYS PSC, will be curtailed from providing its statutory regulatory consumer protection functions that directly affect consumers, and hinder state commission efforts to educate and assist them.

Put simply, the forbearance standard requires that consumers be protected.

47 U.S.C. § 160(a) permits the FCC to forbear from applying any statutory provision or regulation as long as three conditions are met: enforcement of the statutory provision or regulation "is not necessary to ensure that the charge, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and not unjustly or unreasonably discriminatory"; enforcement of the statutory provision or regulation is not necessary to protect consumers; and forbearance is in the public interest. As part of the public interest analysis, the FCC is to evaluate the effects of forbearance on competition.

It is not clear at all that Verizon meets any of these three standards and hence, does not meet the FCC forbearance standard.

The issuance of the FCC public notice also provides state commissions notice of proposed retirement of copper loops, which will directly affect the consumers in areas where copper loops are retired. The NYS PSC is in particular need of these FCC public notices; any proposed retirement of copper loops in Fire Island by the ILEC, Verizon of New York, Inc. ("Verizon NY"), would implicate one of the terms of NYS May 16, 2013 filing as regards to Verizon's temporary roll-out of Voice Link to the residents and businesses on Fire Island. In prior proceedings before the NYS PSC, Verizon of New York, Inc. has committed to maintain the copper infrastructure in use and serving customers. Unless the NYS PSC has sufficient notice of proposed copper retirements, it may be very difficult for the NYS PSC to enforce this term of the May 16, 2013 agreement with Verizon. The NYS PSC cannot protect consumers without the FCC providing adequate time for review and public comment.

The NYS PSC, therefore, must object to FCC forbearance from the requirements of 47 C.F.R. § 51.333, and the FCC should not forebear from the service discontinuance approval requirements set forth in 47 C.F.R. § 63.60 et seq.

47 U.S.C. § 214 requires FCC approval before any telecommunications carrier can discontinue, reduce, or impair service to a community or part of a community.( 47 U.S.C. § 214(a)). To implement this statutory provision, the FCC adopted 47 C.F.R. § 63.60 *et seq.* to establish procedures for obtaining FCC approval for a discontinuance of service. As part of this process, the telecommunications carrier must notify consumers and state commissions of the proposed discontinuance of service.( 47 C.F.R. § 63.71 (a)). Additional procedures address the filing of objections. (47 C.F.R. § 63.71(b) and 47 C.F.R. § 63.90(a)).

Sincerely,

Jim Rosenthal  
Dunewood, Fire Island resident  
Town of Islip, New York